

§ 2.206

40 CFR Ch. I (7–1–11 Edition)

§ 2.206 Advance confidentiality determinations.

(a) An advance determination under this section may be issued by an EPA legal office if—

(1) EPA has requested or demanded that a business furnish business information to EPA;

(2) The business asserts that the information, if submitted, would constitute voluntarily submitted information under § 2.201(i);

(3) The business will voluntarily submit the information for use by EPA only if EPA first determines that the information is entitled to confidential treatment under this subpart; and

(4) The EPA office which desires submission of the information has requested that the EPA legal office issue a determination under this section.

(b) The EPA office requesting an advance determination under this section shall—

(1) Arrange to have the business furnish directly to the EPA legal office a copy of the information (or, where feasible, a description of the nature of the information sufficient to allow a determination to be made), as well as the business's comments concerning the matters addressed in § 2.204(e)(4), excluding, however, matters addressed in § 2.204 (e)(4)(iii) and (e)(4)(iv); and

(2) Furnish to the EPA legal office the materials referred to in § 2.204(f) (3), (7), (8), and (9).

(c) In making a determination under this section, the EPA legal office shall first determine whether or not the information would constitute voluntarily submitted information under § 2.201(i). If the information would constitute voluntarily submitted information, the legal office shall further determine whether the information is entitled to confidential treatment.

(d) If the EPA legal office determines that the information would not constitute voluntarily submitted information, or determines that it would constitute voluntarily submitted information but would not be entitled to confidential treatment, it shall so inform the business and the EPA office which requested the determination, stating the basis of the determination, and shall return to the business all copies of the information which it may have

received from the business (except that if a request under 5 U.S.C. 552 for release of the information is received while the EPA legal office is in possession of the information, the legal office shall retain a copy of the information, but shall not disclose it unless ordered by a Federal court to do so). The legal office shall not disclose the information to any other EPA office or employee and shall not use the information for any purpose except the determination under this section, unless otherwise directed by a Federal court.

(e) If the EPA legal office determines that the information would constitute voluntarily submitted information and that it is entitled to confidential treatment, it shall so inform the EPA office which requested the determination and the business which submitted it, and shall forward the information to the EPA office which requested the determination.

§ 2.207 Class determinations.

(a) The General Counsel may make and issue a class determination under this section if he finds that—

(1) EPA possesses, or is obtaining, related items of business information;

(2) One or more characteristics common to all such items of information will necessarily result in identical treatment for each such item under one or more of the provisions in this subpart, and that it is therefore proper to treat all such items as a class for one or more purposes under this subpart; and

(3) A class determination would serve a useful purpose.

(b) A class determination shall clearly identify the class of information to which it pertains.

(c) A class determination may state that all of the information in the class—

(1) Is, or is not, voluntarily submitted information under § 2.201(i);

(2) Is, or is not, governed by a particular section of this subpart, or by a particular set of substantive criteria under this subpart;

(3) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment;